IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9708 of 2007(E)

OS.632/1989 of ADDL.MUNSIFF COURT, KOLLAM

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PETITIONERS:

1. RHODA FERNANDEZ, WIDOW OF
   PATSY BERNARD FERNANDEZ.

2. CEASER FERNANDEZ, S/O.LATE PATSY
   BERNARD FERNANDEZ, BOTH ARE RESIDING
   AT SURISE VIEW BUNGLOW, M.C.318,
   CONVENT ROAD, THANGASSERY, KOLLAM.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENT:

MAXIMUS FERNANDEZ ALIAS MAXWELL-FERNANDEZ,
RESIDING AT NEVELYU DALE, NEAR FIRESTATION,
SASTHRI JUNTION, KADAPPAKADA, KOLLAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 9708 of 2007 E

JUDGMENT

The petitioners are additional defendants 2 and 3 in O.S.No.632/89 on the file of the Additional Munsiff's Court, Kollam. Plaintiffs claimed title over the scheduled property under Exhibit A2 sale deed executed by the deceased first defendant, who is the predecessor in interest of the petitioners. The petitioners filed I.A.No.1771/98 seeking for expert opinion being obtained in respect of the signature and the thumb impression of late first defendant in Exhibit A2 sale deed dated 1.5.1951. They also filed I.A.No.1772/98 seeking to appoint a handwriting and a finger print expert to examine the genuineness of Exhibit A2 sale deed and Exhibit A1 mortgage deed of Anjengo Sub Registry Office, comparing the signatures as also the thumb impression in the thumb impression register maintained in the Sub Registry Offices concerned.

2. By Exhibit P3 order passed on I.A.No. 1772/98, the court below ordered that the petition can be considered at the time of trial. The grievance of the petitioners is that contrary to the said order, on the review petition filed by the them as I.A.No.1054/07 for reviewing the order, posting the case for final hearing and to get down expert opinion as desired in I.A.No.1772/98, the court below has passed Exhibit P4 order. I.A.No. 1772/98 was not considered at the time of trial, as ordered in Exhibit P3 and the case was posted for arguments after completing the trial. The grievance appears to be genuine, as, in the event of the court finding, on consideration of the case, after final arguments, that I.A.No.1772/98 does not deserve to be allowed, the suit itself will be disposed of and in that event the petitioners will have to file appeal against the decree itself.

In the result, without notice to the respondent, with a view to avoid further delay, I

direct the court below to pass appropriate orders on I.A.No.1772/98 before the disposal of the suit, in compliance with its own direction in Exhibit P3 order. Appropriate orders has to be passed on I.A. No.1772/98, after hearing both sides, as this writ petition is being disposed of without notice to the respondent.

With the above direction, this writ petition is disposed of. Issue copy of this judgment to the counsel for the petitioner on application as per Rules, as expeditiously as possible.

21st March, 2007 (K.P.Balachandran, Judge)

tkv